

June 4, 1982

CONFIDENTIAL AND PRIVILEGED
MEMORANDUM

TO: Philip Morris Incorporated
Attn: Messrs. Holtzman and Adkins

FROM: Abe Krash

RE: Barclay -- R.J. Reynolds Meeting at
Federal Trade Commission, June 3, 1982

Sam Witt telephoned me on Thursday afternoon and described the meeting which R.J. Reynolds representatives had earlier in the day at the Federal Trade Commission with Chairman Miller. The Reynolds representatives present at the meeting were Edward A. Horrigan, Jr. and two Reynolds lawyers, Champ Mitchell and Witt. The FTC officials present at the meeting in addition to Chairman Miller were John H. Carley, the General Counsel, Wallace Snyder and Lydia Parnes, Miller's Legal Advisor. The meeting lasted for about an hour and a quarter.

Witt reported that Horrigan was "very downcast" and "very disappointed" about the meeting. He said that Chairman Miller, in a rambling manner, divided the Barclay problem into two ambiguous phases. Phase 1, which is apparently now concluded, was determining that there was in fact a problem with respect to Barclay. Witt said that Miller

2025045552

appeared to acknowledge that it had been shown there was a problem with respect to the reporting of Barclay's tar delivery. The second phase in Miller's view consists in finding a solution. Witt said that Miller appeared to be approaching the matter not in terms of a solution aimed at Barclay but in terms of an overall solution for tar testing and reporting generally. Witt said that Miller appeared to be preoccupied with finding a "perfect solution" to all of these problems.

According to Witt, Miller said there were three problems or difficulties associated with deciding what to do about Barclay in Phase 2. First, Miller said there was a question of providing due process to Brown & Williamson. Second, Miller said the present problem was extremely complicated. Third, Miller said that a solution to the Barclay issue was complicated by the fact that each Commissioner has his own hidden agenda. Miller did not elaborate on this point.

Witt said that Horrigan repeatedly emphasized the long delays associated with resolving this matter and argued that it was essential that the issue be decided one

2025045553

way or another by the Commission. Witt said that Horrigan was disturbed by the absence of any sense of urgency on Miller's part. Witt said that Miller did not appear to understand the practical ramifications. Witt said further that he felt that Miller's comments indicated the absence of any progress since the meeting which we had had with FTC staff representatives on April 20.

According to Witt, Horrigan twice emphasized the unanimous reports by the three consultants. Miller appeared to recognize that this showed that there was a problem.

At several points during the meeting, Miller stated there was a question whether the Commission should take action which would "penalize innovation" by Brown & Williamson. Miller also at one point advanced the analogy of the Environmental Protection Agency's remedy with respect to car mileage, i.e., the companies might state that smokers derived more or less tar than a specified amount depending upon their smoking habits.

Apart from Carley, none of the staff representatives said anything. Witt said that Snyder nodded his head in approval at a number of the points Horrigan made with respect to the Barclay filter.

2025045554

Miller told the Reynolds representatives that the Commission would deal with the matter "soon"; however, he did not specify the timetable he had in mind.

Witt said that Reynolds had left a memorandum with the Chairman setting out its position concerning Barclay.

In describing the meeting to Jerome Chapman and me, Witt said "I can't sugar-coat the pill." We told Witt that we would relay his report to Alex Holtzman. We also said that we felt we should press the Staff to complete and transmit its report to the Commission. We have received indications that the staff report is about finished and should be ready for transmittal in a week or so. We suggested that it might be useful to discuss general strategy after we learn something about the staff report. Witt agreed with this suggestion.

2025045555